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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 AMY COX, an individual,

14 Plaintiff,

15 vs.

16 LB LENDING, LLC, a Nevada limited liability
17 company; and MACOY CAPITAL PARTNERS,
18 INC., a California corporation.

19 Defendants.

) Case No. 5:17-CV-001580

) FIRST AMENDED COMPLAINT FOR:

1. RESCISSION, DAMAGES, CIVIL
PENALTIES AND ATTORNEYS FEES
UNDER TRUTH-IN-LENDING ACT
2. INJUNCTION, RESTITUTION AND
OTHER RELIEF UNDER CALIFORNIA
UNFAIR PRACTICES ACT, BUSINESS
AND PROFESSIONS CODE SECTION

3. FRAUD

4. BREACH OF FIDUCIARY DUTY

5. NEGLIGENCE

6. SLANDER OF TITLE

DEMAND FOR JURY TRIAL

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 15 U.S.C. § 1640(e) (TILA jurisdiction). This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a) (supplemental jurisdiction), in that the state law claims are based on the same conduct as the federal claims and are so related that they form part of the same case or controversy.

VENUE AND INTRA-DISTRICT ASSIGNMENT

2. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in the U.S. District Court for the Central District of California because Plaintiff entered into the mortgage loans that are the subject of this lawsuit in Riverside County, California, and the events or omissions giving rise to Plaintiff's claims occurred in Riverside County, California.

PARTIES

3. Plaintiff, AMY COX is a natural person residing in Palm Springs, California, ("Plaintiff"). Plaintiff's principal place of residence is 319 Westlake Terrace, Palm Springs, CA 92264 (the "Residence").

4. Defendant LB LENDING, LLC is a Nevada limited liability company doing business in the County of Riverside, California, ("Defendant LB Lending").

5. Defendant Macoy Capital Partners, Inc. is a California corporation doing business in the County of Riverside, California, ("Defendant Macoy Capital");

6. Plaintiff is informed and believes and upon such information and belief alleges that Defendant Macoy Capital Partners was the agent, servants, and/or co-conspirators of Defendant LB Lending, and was acting within the course and scope of said agency and/or conspiracy.

7. At all times relevant hereto, Defendants regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and are the entities to whom the transactions which are the subject of this action are initially payable, making

1 Defendants each a "creditor" within the meaning of and subject to compliance with the
2 Truth In Lending Act ("TILA"), 15 U.S.C. § 1602(f) and Regulation Z § 1026.2(a)(17).

3
4 GENERAL FACTUAL ALLEGATIONS

5 8. On or before February 2011, Plaintiff was approached by Defendant Macoy
6 Capital to extend Plaintiff's then existing loan with Jerome M. Covin, Trustee of the
7 Covin Family Trust (the "Covin Loan").

8 9. The Covin Loan was set to expire on May 31, 2011, but Defendant Macoy
9 Capital orchestrated an extension to May 31, 2013.

10 10. Before the Covin Loan was to mature on May 31, 2013, Plaintiff requested
11 that Defendant Macoy Capital look into refinancing the Covin loan with a traditional
12 home loan. Specifically, in or around July 30, 2012, Plaintiff requested that Defendant
13 Macoy Capital try to refinance her Residence with a 30-year fixed term and at a lower
14 rate.

15 11. Defendant Macoy Capital ignored the request and instead arranged for a
16 one-year loan with Defendant LB Lending (fka Lincoln Berger), effective on or about
17 August 2012 ("Loan 1"). Loan 1 closed on or about October 5, 2012. Defendants sent
18 to Plaintiff the Loan 1 documents only two days before the October 5, 2012 closing
19 date. Prior to closing Loan 1 with LB Lending, Plaintiff requested a 24-month term, but
20 that did not happen as Plaintiff was told she would simply have to refinance Loan 1 in
21 12 months.

22 12. In essence, on or around October 2012, Plaintiff obtained from Defendants,
23 as "creditors," a consumer loan in the amount of \$180,000.00 secured by a deed of
24 trust on the Residence (i.e., Loan 1).

25 13. Defendants knew or should have known that the purpose of the Loan was to
26 refinance the Covin Loan and for other personal, family or household purposes, and the
27 proceeds were used as such.
28

1 14. Defendants never asked Plaintiff if Loan 1 was for a business purpose, never
2 requested or received any information concerning any business purpose that the loan
3 proceeds might be used for, and never received any statement from Plaintiff describing
4 a business purpose of the proceeds.

5 15. Defendants knew or should have known that all of the proceeds were going
6 to be used, and were in fact used, by Plaintiff in connection with Plaintiff's primary
7 residence and other personal and living expenses.

8 16. In early to mid-August 2013, and prior to Loan 1 maturing on August 31,
9 2013, Defendant Macoy Capital orchestrated an extension of Loan 1's maturity date of
10 August 31, 2013 to August 31, 2015. The extension did not occur until well after the
11 August 31, 2013 maturity date. Prior to closing on the Loan 1 extension, Plaintiff
12 requested in September 2013 if she could get a "traditional loan" (i.e., a 30-year loan
13 with a lower interest rate). Defendant Macoy Capital ignored the Plaintiff's request for
14 a traditional loan.

15 17. Defendants did not give Plaintiff the extension documents until well after
16 the initial maturity date of August 31, 2013 for Loan 1. Defendants thus backdated all
17 documents related to the extension of Loan 1. That is, Defendants did not provide
18 Plaintiff with the loan extension documents until sometime on or about September 24,
19 2013, and Defendant Macoy Capital directed Plaintiff to sign them immediately and
20 return via overnight mail. Defendants knew or should have known that since the initial
21 maturity date of August 31, 2013 had passed, that Plaintiff had limited options but to
22 sign the extension. Loan 1 was thus amended to extend the maturity date of Loan 1
23 from August 31, 2013 to August 31, 2015.

24 18. During the entire process of Loan 1, including the amendment thereto,
25 Defendants provided Plaintiff with several loan documents, including: (i) a Promissory
26 Note for \$180,000.00, (ii) an Occupancy Affidavit And Financial Status; and (iii) a Deed
27 of Trust With Assignment of Rents, Security Agreements And Fixture Filings, (the
28 "2013 Deed of Trust").

1 19. The 2013 Deed of Trust would be used to secure Loan 1 with Plaintiff's
2 property, where Plaintiff lives as her principal residence. Plaintiff made clear and
3 Defendants knew or should have known that Plaintiff's property used to secure Loan 1
4 was her principal residence.

5 20. The terms of Loan 1 for a principal amount of \$180,000.00 was initially for
6 a term of 12 months (maturing in August 2013) at an annual interest rate of 8.5%, but
7 the term was later extended for another 24 months (maturing in August 2015) at the
8 same annual interest rate of 8.5%. Thus, Loan 1 provided that Plaintiff make monthly
9 interest-only payments of \$1,275.00, and that a balloon payment of the principal
10 balance would be due at the maturity date.

11 21. Defendants did not ascertain Plaintiff's eligibility for or ability to repay Loan
12 1. Defendants did not ask Defendant for, nor did Defendants receive, any financial or
13 employment information.

14 22. Plaintiff was not provided any documents in anticipation of executing the
15 documents for Loan 1. They were all given to her for immediate execution with closing
16 to take place within two days. After executing the Loan documents, Plaintiff was not
17 provided any documents nor mandatory disclosures for Loan 1.

18 23. In fact, the day prior to the date for signing the loan documents was when
19 Plaintiff learned for the first time in an email from Defendant Macoy Capital that the
20 interest rate for the loan would be 8.5%, despite Plaintiff's prior repeated requests for
21 a traditional home loan (longer term with lower interest rate). Only 2 days before
22 signing the loan documents did Plaintiff learn that the terms of Loan 1 included the
23 obligation to pay from the proceeds of the Loan the following: a 1% cash point for an
24 origination fee to Defendant I.B Lending of \$1,800.00; a 2% cash point for a broker fee
25 of \$3,600.00 to Defendant Macoy Capital; cash to Defendant Macoy Capital for cost of
26 so-called Disclosure/Docs of \$650.00; cash for Prepaid Interest of \$167.67; cash for
27 title, taxes and recording charge of \$561.00; cash for escrow charges of \$610.00; and a
28 balloon payment for the full loan amount that would be due on August 30, 2015. The

1 Loan also provided a default rate of 17.99%. When taking into consideration all of the
2 above, the Loan is more than 6.5 points above the federal Average Prime Rate Offer, and
3 was thus a "high cost" or HOEPA loan governed by 15 C.F.R. § 1026.35 of Regulation Z.

4 24. Well after closing on Loan 1 and upon review of the Note evidencing the
5 Loan 1, Plaintiff learned:

6 (a) The Note provided for an increase in the interest rate by 5% by way of a
7 service fee for any payment late by more than ten (10) calendar days;

8 (b) The Note further provided for an increase in the interest rate by 2% by way
9 of a service fee if the unpaid principal balance due at the maturity date is late; and

10 (c) The Note further provided for an increase in the interest rate to at least
11 17.99% upon the occurrence of an event of default;

12 25. Defendants knew that Loan 1 was about to mature in August 2015, and
13 prior to then, Defendant Macoy Capital informed Plaintiff that Defendant LB Lending
14 would refinance its Loan 1 with a new loan.

15 26. On or about June 10, 2015, Plaintiff obtained from Defendant LB Lending
16 and Defendant Macoy Capital (collectively, "Defendants"), as "creditors", another
17 consumer loan in the amount of \$270,000.00, secured by a deed of trust on the
18 Residence ("Loan 2").

19 27. Defendants knew or should have known that the purpose of the Loan was to
20 refinance Loan 1 and for other personal, family or household purposes, and the
21 proceeds were used as such.

22 28. Defendants never asked Plaintiff if Loan 2 was for a business purpose, never
23 requested or received any information concerning any business purpose that the loan
24 proceeds might be used for, and never received any statement from Plaintiff describing
25 a business purpose of the proceeds.

26 29. Defendants knew or should have known that all of the proceeds were going
27 to be used, and were in fact used, by Plaintiff in connection with Plaintiff's primary
28 residence and other personal and living expenses.

1 30. At or around closing of Loan 2, Plaintiff noticed in glancing through the loan
2 documents that there was language that said Loan 2 was for a business purpose.
3 Plaintiff immediately informed Defendants that she did not understand that language
4 because Loan 2 was not for a business purpose, that that the proceeds would be used
5 to refinance the Loan 1, and the net proceeds to her would be used for personal, family
6 and/or household purposes. Defendants responded along the lines with "don't worry
7 about it; it's just language that we have to use".

8 31. Relying upon Defendants' response, Plaintiff signed the Loan 2
9 documentation.

10 32. During the process of Loan 2, Defendants provided Plaintiff with several
11 loan documents around two days before closing, including: (i) a Promissory Note for
12 \$270,000.00, dated June 9, 2015, (ii) an Occupancy Affidavit and Financial Status, and
13 (iii) a Deed of Trust With Assignment of Rents, Security Agreements And Fixture
14 Filings, dated June 9, 2015 (the "2015 Deed of Trust").

15 33. On or about August 26, 2015, well after closing on Loan 2 in June 2015,
16 Defendants then provided Plaintiff, for the first time, a Borrower's Agreement to sign.
17 The Borrower's Agreement included language that Loan 2 was for an investment
18 purpose. When Plaintiff asked about this, Defendants response was as before in that
19 Plaintiff should "not worry about it." Relying on Defendants response, Plaintiff signed
20 and returned to Defendants the Borrower Agreement on or about September 13, 2015.

21 34. Moreover, all the areas in the forms that referenced the stated purpose of
22 the business or investment were left blank. Defendants intentionally did not pursue
23 this information as they knew or should have known that the purpose of the Loans 1
24 and 2 were for personal, family, or household purposes.

25 35. The 2015 Deed of Trust would be used to secure Loan 2 with Plaintiff's
26 Residence, where Plaintiff lives as her principal place of dwelling.

27 36. The loan proceeds of Loan 2 would pay off Loan 1 and thus the 2013 Deed
28 of Trust would be released and replaced by the 2015 Deed of Trust.

1 37. Effectively, at the closing of Loan 2, the only deed of trust on Plaintiff's
2 residence was the 2015 Deed of Trust.

3 38. The terms of Loan 2 were for a principal amount of \$270,000.00, and
4 payable within 24 months at an annual interest rate of 8.5%. Thus, Loan 2 provided
5 that Plaintiff make monthly interest-only payments of \$1,912.50, and that a balloon
6 payment of the principal balance would be due at the maturity date. Loan 2 also
7 provides a default rate of 17.00%. When taking into consideration all of the above, the
8 annual percentage rate was more than 6.5 points higher than the federal Average
9 Prime Rate Offer and was thus a "high cost" or HOEPA loan under Regulation Z.

10 39. Defendants did not ascertain Plaintiff's eligibility for or ability to repay Loan
11 2. Defendants did not ask Plaintiff for, nor did Defendants receive, any financial or
12 employment information, even though Plaintiff informed Defendants that she was
13 unemployed and was looking for employment.

14 40. Plaintiff was not provided any documents in anticipation of executing the
15 documents for Loan 2. They were all given to her for immediate execution with closing
16 to take place within a day or two. After executing the Loan documents, Plaintiff was
17 not provided any documents nor mandatory disclosures for Loan 2.

18 41. Only at closing did Plaintiff learn that the terms of Loan 2 included the
19 obligation to pay from the proceeds of the Loan the following: a 1% cash point for an
20 origination fee to Defendant LB Lending of \$2,700.00; a 2% cash point for a broker fee
21 of \$5,400.00 to Defendant Macoy Capital; cash for processing fee of \$350.00 to
22 Defendant Macoy Capital; cash for attorneys' fees and cost for Defendant Macoy
23 Capital's attorneys of \$1,500.00; cash for Prepaid Interest of \$1,275.00; cash for title,
24 taxes and recording charge of \$945.00; cash for escrow charges of \$935.00; interest on
25 the entire principal at the rate of 8.5% per annum with a balloon payment due on June
26 8, 2017, 2015.

1 42. After closing on Loan 2 and upon review of the Note evidencing the Loan,
2 Plaintiff learned:

3 (a) The Note provided for an increase in the interest rate by 5% by way of a
4 service fee for any payment late by more than ten (10) calendar days;

5 (b) The Note further provided for an increase in the interest rate by 2% by way
6 of a service fee if the unpaid principal balance due at the maturity date is late; and

7 (c) The Note further provided for an increase in the interest rate to at least 17%
8 upon the occurrence of an event of default;

9 43. Under both Loans 1 and 2, it is possible that the borrower would have an
10 interest rate of up to 17% plus pay fees and penalties of another 7% at any time during
11 the term on of the Loan.

12 44. The scheme that Defendants put into action was to create sham business
13 loans in an effort to avoid consumer protection laws such as TILA, Regulation Z, and
14 other applicable laws. Defendants knew or should have known that: (a) the Plaintiff's
15 Residence, which was the property used to secure Loans 1 and 2 (collectively, the
16 "Loans") by LB Lending to Plaintiff; (b) that the Loans were for consumer purposes and
17 not for business/investment purposes; and (c) Plaintiff was unemployed at the time of
18 Loan 2, and had effectively no income at the time of Loan 1.

19 45. Defendants intentionally and/or negligently cloaked the Loans as business
20 loans when in fact these were consumer loans secured by Plaintiff's Residence.
21 Defendants intentionally and/or negligently did so to avoid giving the proper
22 disclosures and affording Plaintiff the proper protections under TILA, Regulation Z,
23 and other applicable laws.

24 46. Defendants' scheme to cloak consumer loans as business loans began when
25 Defendants knew or should have known that Plaintiff desperately needed to refinance
26 the Covin Loan and then Loan 1 with Defendant LB Lending as Plaintiff did not have the
27 financial means to pay off any of those loans upon their respective maturity.
28

1 47. Defendants placed Plaintiff in a spiral of perpetual short-term high-interest
2 loans that eroded Plaintiff's equity of her Residence.

3 48. Defendants waited till the very last minute to give Plaintiff the loan
4 documents and even had Plaintiff back-date documents, and would then demand that
5 Plaintiff immediately sign and return the documents. Defendants' pressure tactics
6 were to take advantage of Plaintiff's dire situation of losing her home.

7 49. Defendants knew or should have known that (a) giving the loan documents
8 to Plaintiff only one or two days before the closing and instructing Plaintiff to sign
9 them immediately, and (b) giving loan documents to Plaintiff after Loan 2 closed and
10 instructing Plaintiff to sign them immediately would not allow Plaintiff time to hire an
11 attorney to review the loan documents.

12 50. On or about June 7, 2017, Defendants' attorney sent a demand letter to
13 Plaintiff saying the Plaintiff is in default on the Note to Defendant LB Lending.

14 51. On or about June 16, 2017, Plaintiff sent a notice of rescission under TILA to
15 Defendants and expressed a willingness to repay Defendants the amount Plaintiff
16 would owe as a result of rescission. Within 20 days of the notice of rescission,
17 Defendant LB Lending failed and continues to fail to release its security interest in
18 Plaintiff's Residence as required under TILA or to otherwise cooperate in
19 accomplishing the rescission.

20 FIRST CLAIM

21 (For Violation of Federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq.)

22 52. Plaintiff is a "consumer" within the meaning of Federal Reserve Regulation
23 Z (hereinafter "Regulation Z," 12 C.F.R. § 1026.2(a)(1) with respect to the loan
24 transactions described in this Complaint.

25 53. At all relevant times, Defendant LB Lending was a "creditor" within the
26 meaning of Regulation Z, 12 C.F.R. § 1026.2(a)(17) and as defined in 15 U.S.C. §
27 1602(g) of the Truth-in-Lending Act ("TILA"), in that Defendant LB Lending: (1)
28 regularly extended consumer credit in the form of mortgage loans that were payable in

1 more than four installments and for which the payment of a finance charge was
2 required; and (2) was the "person" to which those mortgage loans were initially
3 payable.

4 54. On or about May 8, 2009 and ever since then, Plaintiff had an "ownership
5 interest" (within the meaning of Regulation Z, 12 C.F.R. § 1026.23(a)) in the real
6 property located at 319 Westlake Terrace, Palm Springs, CA 92264 (the "Residence").
7 At all relevant times, the Residence was Plaintiff's "principal dwelling" within the
8 meaning of Regulation Z, 12 C.F.R. § 1026.23(a).

9 55. At all relevant times, Defendant LB Lending's agent, Defendant Macoy
10 Capital were "loan originators" as defined in 12 C.F.R. § 1026.36(a) of Regulation Z, in
11 that Defendant Macoy Capital, by and through its employees and/or agents, Mitch
12 Ohlbaum and David Rosenberg, were persons who, for compensation or other
13 monetary gain, or in expectation of compensation or other monetary gain, arranged,
14 negotiated, or otherwise obtained an extension of consumer credit for another person,
15 including Plaintiff.

16 56. The Loans originated by Defendant Macoy Capital on behalf of Plaintiff were
17 secured by a "dwelling" as defined by 15 U.S.C. § 1602(w) of TILA, in that they were
18 residential structures or mobile homes that contained one to four family housing units
19 or individual units of condominiums or cooperatives.

20 57. Under the Truth-in-Lending Act, 15 U.S.C. § 1635 and Regulation Z, 12 C.F.R.
21 § 1026.23, Defendants were required to provide Plaintiff with a prescribed form of
22 notice of Plaintiff's three-day right to cancel the Loans. Defendants failed to comply
23 with 15 U.S.C. § 1635.

24 58. Under the Truth-in-Lending Act, 15 U.S.C. § 1638 and Regulation Z, 12 C.F.R.
25 § 1026.18, Defendants were required to provide Plaintiff with a prescribed form of
26 notice and disclosure of the material terms of the Loans, including the annual
27 percentage rate, finance charge, amount financed, total of payments, payment
28 schedule, the security interest Defendants were retaining and other information. No

1 disclosures were provided, and thus Defendants failed to comply with 15 U.S.C. § 1638
2 and Regulation Z, 12 C.F.R. § 1026.18.

3 59. Regulation Z required the Defendants, and each of them to consider,
4 document and verify Plaintiff's ability to repay the Loans, none of which Defendants
5 even started to do. 12 C.F.R. §1026.43(c)(5). As mentioned above, Plaintiff was
6 unemployed at the time of Loan 2, and had effectively no income at the time of Loan 1.

7 60. In calculating a borrower's ability to repay a loan such as Loan 1 and Loan
8 2, a creditor is required by Regulation Z to assume that the borrower's monthly
9 payments are equal to any balloon payment. Special rules apply for loans with a
10 balloon payment, interest-only loans, and negative amortization loans. A creditor must
11 make the consideration required under paragraph (c)(2)(iii) of this section for: (A) a
12 loan with a balloon payment, as defined in § 1026.18(s)(5)(i), using: (1) The maximum
13 payment scheduled during the first five years after the date on which the first regular
14 periodic payment will be due for a loan that is not a higher-priced covered transaction;
15 or (2) The maximum payment in the payment schedule, including any balloon
16 payment, for a higher-priced covered transaction.

17 61. The Loans were "high cost" loans that were arranged through the services
18 of Defendant Macoy Capital, a mortgage broker. Under 12 C.F.R. § 1026.35, a "high-cost
19 loan" is defined as any consumer home loan where the annual percentage rate ("APR")
20 exceeds 6.5 percentage points over the average prime rate offer index in a case of a
21 first lien transaction. Here, the Loans had an effective APR at or above 10.5%, which is
22 more than 6.5 percentage points over the average prime rate offer index that ranged
23 from 3.04 to 3.24% over all relevant times.

24 62. Because the Loans were high cost, Regulation Z's Home Owner Equity
25 Protection Act provisions ("HOEPA") required additional disclosures at least three
26 days before consummation of the transaction. (15 U.S.C. § 1639(b)(1).) Substantively,
27 HOEPA generally precludes any prepayment penalty provision in the loan (15 U.S.C. §
28 1639(c)), prohibits increases in the interest rate charged following any default (*id.*, §

1 1639(d)), and bars negative amortization (*id.*, § 1639(f)) and more than 2 prepaid
2 monthly payments (*id.*, § 1639(g)). Most importantly, HOEPA requires that a lender
3 consider a borrower's ability to repay a loan. Any failure of the creditor to comply with
4 the requirements of HOEPA is treated as a failure to deliver material disclosures,
5 thereby triggering the debtor's right to rescind. (15 U.S.C. § 1639(j).) Defendants, and
6 each of them failed to comply with any aspects of HOEPA.

7 63. Because the annual percentage rate exceeded 6.5 points over the Average
8 Prime Rate Offer threshold under HOEPA amendments to TILA, codified at 15 U.S.C. §
9 1639, Defendants were required to provide Plaintiff with a prescribed form of notice
10 and early waiting period before the Plaintiff became obligated under any loan
11 contracts. No notice or waiting period was provided. In addition, because the loans
12 were subject to HOEPA, Defendants were prohibited from inserting into the
13 promissory notes any provision for a balloon payment and from making a loan without
14 considering the ability of Plaintiff to repay the same. Defendants, however, did insert
15 provisions for balloon payments under Loans 1 and 2. Defendants thus violated both
16 aspects of HOEPA.

17 64. Because the balloon payment called for in the note in Loan 1 was
18 \$180,000.00, Plaintiff would have had to ascertain that Plaintiff had a monthly income
19 sufficient to make a monthly mortgage payment of \$180,000.00, which of course,
20 Plaintiff did not even come close to having.

21 65. Similarly, because the balloon payment called for in the note in Loan 2 was
22 \$270,000.00, Plaintiff would have had to ascertain that Plaintiffs had a monthly income
23 sufficient to make a monthly mortgage payment of \$270,000.00, which of course,
24 Plaintiff did not even come close to having.

25 66. As a result of the above violations of TILA, this complaint again serves as
26 notice under 15 U.S.C. § 1635 that Plaintiff demands rescission of the Loan against
27 Defendants, and each of them. By operation of law the 2015 Deed of Trust upon the
28

1 Property is now void and Defendants have a legal obligation to reflect that it has been
2 eliminated as a lien on Plaintiff's home.

3 67. As a result of the above violations of TILA, on June 16, 2017, Plaintiff served
4 on Defendants notice of Plaintiff's election to rescind Loan 2. Defendants failed and
5 refused to comply with the rescission request or to perform their obligations under
6 TILA.

7 68. In contravention of their obligations under TILA to reconvey the 2015 Deed
8 of Trust, on August 2, 2017, Defendants recorded a Notice of Default And Election To
9 Sell Under Deed of Trust.

10 69. Plaintiff is entitled to the following relief by reason of the foregoing
11 violations of TILA by Defendants: (1) an order confirming that Plaintiff has validly
12 rescinded Loans 1 and 2 and has the right to repay the principal of the Loans with
13 credit for all finance charges and payments Plaintiff has made, (2) statutory damages
14 for violation of HOEPA equal to the sum of all finance charges in the Loan transactions,
15 (3) a civil penalty of \$2,000 each for Defendants' wrongful refusal to recognize
16 Plaintiff's June 16, 2017 rescission demand, (4) civil penalties and damages for
17 violation of HOEPA and TILA's disclosure regime, and (5) statutory attorneys' fees at a
18 multiple to be determined by motion.

19 SECOND CLAIM

20 (Unfair Business Practices)

21 70. Plaintiff incorporates by this reference all earlier paragraphs.

22 71. Plaintiff alleges on information and belief that within four years past and
23 continuing until the present time Defendants engaged in and are engaging in business
24 practices which are unfair, deceptive, untrue and/or fraudulent within the meaning of
25 California Business and Professions Code Section 17200 et seq., in that Defendants
26 regularly violated TILA and HOEPA in the Loans transactions with consumers.

27 72. By reason of the foregoing unfair business practices Plaintiff seeks the
28 following relief:

(a) Temporary, preliminary and permanent injunctive relief restraining Defendants' future violation of the complained of business practices;

(b) Restitution of interest, fees, finance charges and other amounts paid by Plaintiff to Defendants during the last four years for Loan 1 and Loan 2; and,

(c) An order giving Plaintiff her rights under TILA and HOEPA by reason of the violations of those sections by Defendants.

THIRD CLAIM

(Fraud)

73. Plaintiff incorporates by this reference all earlier paragraphs.

74. At all relevant times, Plaintiff's purpose for Loans 1 and 2 with Defendant LB Lending was to refinance the prior loans, which were secured by her Residence, and to provide additional income for personal, family, or household purposes.

75. At the time Loan 2 was made, Plaintiff was unemployed and the net proceeds from Loan 2, after refinancing Loan 1, was so that Plaintiff could purchase daily necessities such as food, clothing, transportation, and to pay ongoing utility and HOA bills, make necessary home and car repairs, etc. Plaintiff informed Defendants of such purpose for the Loans.

76. Plaintiff informed Defendants that she did not have, at all relevant times, a business or commercial operation of any sorts, and did not understand language in the documents that mentioned that the purpose of the loans was for business purposes and not for personal, family, or household purposes. Whereupon, Mitch Ohlbaum and David Rosenberg, the loan officers of Defendant Macoy Capital, who in turn were the agents and representatives of Defendant LB Lending, repeatedly said, "not to worry about it."

77. Defendants knew or should have known that the Loans were for personal, family, or household purposes; knew or should have known that Plaintiff did not have any business purpose for the Loans nor was Plaintiff contemplating starting any business; knew or should have known that Plaintiff was unemployed at the time of

1 refinancing Loan 1 with Loan 2; knew or should have known that Plaintiff would rely
2 on its statements that Plaintiff need not worry about the language regarding the Loans
3 for a business purpose; knew or should have known that the Loans were sham
4 business loans and were in reality consumer loans; and that Defendant Macoy Capital
5 intended to create such sham business loans as a way to avoid all the consumer law
6 protection for Plaintiff.

7 78. Defendant Macoy Capital made such false statements with the intent to
8 induce Plaintiff to rely on them, so that it could receive fees and commission and that
9 Defendant LB Lending would receive interest and balloon payments and fees.

10 79. Defendants also included a credit report with outdated information that
11 showed Plaintiff living in Los Angeles, California at the time of Loan 1. That credit
12 report was based on Plaintiff's prior home, which she sold in March 2009, well before
13 any of the Loans were made.

14 80. Defendants knowingly concealed the fact that they had included false
15 information about Plaintiff's purpose for the Loans, her employment status, her
16 Residence, and Defendants falsified other related documents.

17 81. On August 2, 2017, Defendants falsely and wrongfully filed a Notice of
18 Default And Election To Sell Under Deed Of Trust with the County of Riverside ("Notice
19 of Default").

20 82. The Notice of Default is against Plaintiff and Plaintiff's residence.

21 83. The Notice of Default was wrongful because Plaintiff had validly exercised
22 her rights to rescind the Loan under TILA in a letter dated June 16, 2017 and to offset
23 all interest and finance charges paid to Defendants.

24 84. The Notice of Default of Default includes a false declaration that "California
25 Civil Code Section 2923.5 or Section 2923.55 do not apply because the loan is not
26 secured by a first mortgage or first deed of trust that secures a loan, or that encumbers
27 real property."
28

1 obtain the Deed of Trust of her residence, and credit against the Loans' amounts all
2 interest, fees and other costs she paid and/or incurred.

3 SIXTH CLAIM

4 (Slander of Title)

5 97. Plaintiff incorporates by this reference all earlier paragraphs.

6 98. On August 2, 2017, Defendants wrongfully filed the Notice of Default.

7 99. The Notice of Default was wrongful because Plaintiff had validly exercised
8 her rights to rescind the Loan under TILA in a letter dated June 16, 2017 and to offset
9 all interest and finance charges paid to Defendants.

10 100. The Notice of Default of Default includes a false declaration that "California
11 Civil Code Section 2923.5 or Section 2923.55 do not apply because the loan is not
12 secured by a first mortgage or first deed of trust that secures a loan, or that encumbers
13 real property."

14 101. Defendants clearly knew or should have known that Loan 2, which is the
15 loan in connection with the Notice of Default, is secured by a first deed of trust against
16 Plaintiff's Residence.

17 102. The 2015 Deed of Trust securing Loan 2 says that it is a second lien. This
18 is false given that the escrow documents show that the Loan 2 proceeds were used to
19 pay off Loan 1, and that there are no other mortgages or deeds of trust on the Plaintiff's
20 Residence.

21 103. Based on the foregoing allegations, foreclosing on Loan 2 must meet the
22 requirement of California Civil Code §§ 2923 and 2924.

23 104. Defendants or its agents never called or visited Plaintiff as required under
24 Cal. Civil Code § 2923.5 to discuss Plaintiff's financial situation. Plaintiff has been living
25 at her residence that is encumbered by the Loan 2 and Plaintiff's phone number and
26 email are on file with Defendants. Thus, there is no reason or good faith actions on the
27 part of Defendants for failing to contact Plaintiff and have a discussion regarding
28 Plaintiff's financial situation as required by law. Accordingly, the requisite 30-day

1 period has not even begun to start, which makes Defendants' recording of the Notice of
2 Default unlawful under Cal. Civil Code § 2923.5.

3 105. Moreover, Plaintiff requested a loan modification application with
4 Defendants, and Defendants failed to provide a loan modification application to
5 Plaintiff as required under California law, and until that loan modification process is
6 done, under Cal. Civil Code § 2924.18, Defendants cannot record a Notice of Default.

7 106. The total debt stated on the Notice of Default includes accrued interest of
8 17% as well as other charges, all of which are improper given that the 17% interest
9 rate is disallowed under TILA and HOEPA, and that Plaintiff dutifully rescinded Loan 2
10 that is secured by the 2015 Deed of Trust that Defendant LB Lending is attempting to
11 foreclose upon, and thus Defendant LB Lending is prohibited from claiming such
12 accrued interest and charges that stems from its wrongful refusal to release the Deed
13 of Trust pursuant to TILA.

14 107. Plaintiff's reputation and creditworthiness has been adversely affected by
15 the wrongful recordation of the Notice of Default. The wrongful recordation of the
16 Notice of Default was the proximate cause of damage to Plaintiff, including but not
17 limited to Plaintiff not being able to refinance Loan 2, the exact amount will be proven
18 at time of trial.

19 108. Defendants' actions in wrongfully recording the Notice of Default was
20 intentional, malicious and oppressive, entitling Plaintiff to punitive damages to be
21 proven at time of trial.

22 WHEREFORE, Plaintiff prays as follows:

23 As to First Claim for Relief:

- 24 1. A declaration that Plaintiff has validly rescinded her Loans under the Truth in
25 Lending Act and is entitled to the appropriate remedies flowing from such rescission;
26 2. Civil penalties of \$4,000 each;
27 3. For actual and statutory damages and penalties as alleged herein;
28 4. Statutory attorneys' fees at a multiple to be determined by motion, and

1 5. Actual damages in an amount to be proven at time of trial.

2 As to the Second Claim for Relief:

3 1. Temporary, preliminary and permanent injunctive relief restraining
4 Defendants' future violation of the complained of business practices;

5 2. Restitution of interest paid to Plaintiff who has been negatively affected by
6 the unfair business practices during the last four years; and,

7 3. An order giving Plaintiff her rights under TILA and HOEPA by reason of the
8 violations of those sections by Defendants.

9 As to the Third Claim for Relief:

10 1. Restitution of interest paid to Plaintiff who has been negatively affected by
11 the unfair business practices during the last four years;

12 2. An order giving Plaintiff her rights under TILA and HOEPA by reason of the
13 violations of those sections by Defendants.

14 3. Punitive or exemplary damages in an amount to be proven at time of trial.

15 As to the Fourth Claim for Relief:

16 1. Restitution of interest paid to Plaintiff who has been negatively affected by
17 the unfair business practices during the last four years; and,

18 2. An order giving Plaintiff her rights under TILA and HOEPA by reason of the
19 violations of those sections by Defendants;

20 3. Money damages in an amount to be proven at time of trial; and

21 4. Punitive or exemplary damages in an amount to be proven at time of trial.

22 As to the Fifth Claim for Relief:

23 1. Restitution of interest paid to Plaintiff who has been negatively affected by
24 the unfair business practices during the last four years; and,

25 2. An order giving Plaintiff her rights under TILA and HOEPA by reason of the
26 violations of those sections by Defendants; and

27 3. Money damages in an amount to be proven at time of trial.

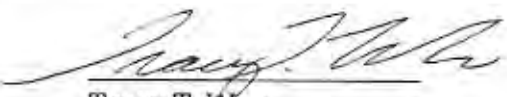
1 As to the Sixth Claim for Relief:

- 2 1. Temporary, preliminary and permanent injunctive relief restraining
3 Defendant from foreclosing on its deed of trust for Plaintiff's residence;
4 2. An order requiring Defendants to rescind the Notice of Default;
5 3. Money damages in an amount to be proven at time of trial;
6 4. Punitive or exemplary damages in an amount to be proven at time of trial.

7 As to all claims for relief:

- 8 1. Payment by Defendants to counsel for the Plaintiff of reasonable attorneys'
9 fees by the statute sought to be enforced or alternatively, under the substantial benefit
10 doctrine, or alternatively, under the common fund doctrine from sums collected from
11 Defendants for distribution to injured parties;
12 2. Costs of the action; and
13 3. General relief.


14
15 Dated September 20, 2017


Tracy T. Woo
Attorney for Plaintiff

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17
18 DEMAND FOR JURY TRIAL

19 Plaintiff demands trial by jury on each of the above claims for relief.

20
21 Dated: September 20, 2017


Tracy T. Woo
Attorney for Plaintiff